

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 06, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ARIEL H.,¹

Plaintiff,

v.

FRANK BISIGNANO
COMMISSIONER OF SOCIAL
SECURITY,²

Defendant.

NO: 4:24-CV-05154-RLP

ORDER AFFIRMING THE
COMMISSIONER'S DECISION

BEFORE THE COURT is an appeal from an Administrative Law Judge (ALJ) final decision denying disability income benefits under Title II and supplemental security income under Title XVI of the Social Security Act. ECF No. 12. The Court considered the matter without oral argument. For the reasons discussed below, the Court concludes the ALJ did not commit harmful legal error in

¹ Plaintiff's first name and last initial are used to protect his privacy.

² Frank Bisignano became the Commissioner of Social Security on May 7, 2025. Pursuant to Rule 25(d) of the Rules of Civil Procedure, Frank Bisignano is substituted for Michelle King as the Defendant in this suit.

1 evaluating the lay witness testimony, Mr. H.’s symptom testimony, or the medical
2 evidence. Therefore, Mr. H.’s brief, ECF No. 12, is denied and the Commissioner’s
3 brief, ECF No. 14, is granted.

4 BACKGROUND

5 Mr. H. was 33 years old on the alleged onset date of January 1, 2020. Tr. 95.
6 Mr. H. was able to graduate from high school with a GED. Tr. 63; 766. Mr. H. has
7 previously been employed as a stock clerk, a clothing sorter, a janitor, a cart
8 attendant, and a package truck driver’s helper. Tr. 63, 360, 516, 560, 706.

9 Mr. H. filed this claim for disability insurance benefits and supplemental
10 security income in December 2020. Tr. 263-84. The claim was denied initially and
11 upon reconsideration. Tr. 95-134, 135-80. Mr. H. and his mother testified at a
12 hearing in September 2023 concerning Mr. H.’s work history and his ability to
13 perform household chores. Tr. 58-90. On December 19, 2023, the ALJ issued an
14 unfavorable decision, Tr. 15-29, and the Appeals Council denied review. Tr. 1-6.
15 The matter is now before this Court pursuant to 42 U.S.C. § 405(g).

16 STANDARD OF REVIEW

17 This Court’s review of a final decision of the Commissioner of Social Security
18 is governed by 42 U.S.C. § 405(g). The scope of review is limited; the
19 Commissioner’s decision will be disturbed “only if it is not supported by substantial
20 evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir.
21 2012). If the evidence in the record “is susceptible to more than one

1 rational interpretation, [the Court] must uphold the ALJ's findings if they are
2 supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674
3 F.3d 1104, 1111 (9th Cir. 2012).

4 Further, a district court "may not reverse an ALJ's decision on account of an
5 error that is harmless." *Id.* An error is harmless "where it is inconsequential to the
6 [ALJ's] ultimate nondisability determination." *Id.* at 1115 (quotation and citation
7 omitted). The party appealing the ALJ's decision generally bears the burden of
8 establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

9 FIVE-STEP EVALUATION PROCESS

10 A claimant must satisfy two conditions to be considered "disabled" within the
11 meaning of the Social Security Act. First, the claimant must be "unable to engage in
12 any substantial gainful activity by reason of any medically determinable physical or
13 mental impairment which can be expected to result in death or which has lasted or
14 can be expected to last for a continuous period of not less than twelve months." 42
15 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant's impairment must
16 be "of such severity that he is not only unable to do [his or her] previous work[,] but
17 cannot, considering [his or her] age, education, and work experience, engage in any
18 other kind of substantial gainful work which exists in the national economy." 42
19 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

20 The Commissioner has established a five-step sequential analysis to determine
21 whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§ 404.1520(a)(4)(i)-

(v), 416.920(a)(4)(i)-(v). At step one, if the claimant is engaged in “substantial gainful activity,” the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(b), 416.920(b). At step two, the Commissioner considers the severity of the claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the claimant suffers from “any impairment or combination of impairments which significantly limits [his or her] physical or mental ability to do basic work activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c), 416.920(c). At step three, the Commissioner compares the claimant’s impairment to severe impairments recognized by the Commissioner to be so severe as to preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

If the severity of the claimant’s impairment does not meet or exceed the severity of the enumerated impairments, the Commissioner must assess the claimant’s residual functional capacity (RFC), which is the claimant’s ability to perform physical and mental work activities on a sustained basis despite his or her limitations, 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

At step four, the Commissioner considers whether, in view of the claimant’s RFC, the claimant is capable of performing work that he or she has performed in the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). If not, the analysis proceeds to step five and the Commissioner considers whether, in view

1 of the claimant's RFC, the claimant is capable of performing other work in the
2 national economy. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

3 The claimant bears the burden of proof at steps one through four above.
4 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
5 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
6 capable of performing other work; and (2) such work "exists in significant numbers
7 in the national economy." 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v.*
8 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

9 ALJ'S FINDINGS

10 At step one, the ALJ found Mr. H. has not engaged in substantial gainful
11 activity since January 1, 2020, the alleged onset date. Tr. 18. At step two, the ALJ
12 found that Mr. H. has the following severe impairment: borderline intellectual
13 functioning. *Id.*

14 At step three, the ALJ found that Mr. H. does not have an impairment or
15 combination of impairments that meets or medically equals the severity of one of the
16 listed impairments. Tr. 19. With respect to the RFC, the ALJ found Mr. H. has the
17 capacity to perform a full range of work at all exertional levels with the following
18 nonexertional limitations: the claimant can only perform simple, routine, and
19 repetitive tasks. Tr. 22.

20 At step four, the ALJ found Mr. H. is capable of performing past relevant
21 work as a bagger. Tr. 28. Based on these adverse findings, the ALJ determined that

Mr. H. has not been under a disability, as defined in the Social Security Act, from January 1, 2020, through the date of the decision. Tr. 29.

ANALYSIS

Mr. H.'s assignments of error largely pertain to the ALJ's assessment of testimony and medial opinions. He also claims the ALJ erred in its assessment of the listings. While the Court agrees with some of Mr. H.'s assignments of error, the Court ultimately concludes the ALJ did not commit reversible error and that the ALJ's findings are supported by substantial evidence. Each claim of error is addressed in turn.

A. Lay Witness Testimony

Mr. H. contends the ALJ improperly rejected Mr. H.'s mother's testimony without providing germane reasons to discount it.

For claims filed on or after March 27, 2017, 20 C.F.R. §§ 404.1520c and 416.9520c indicate that an ALJ must evaluate evidence from medical sources and clarifies how an ALJ should evaluate nonmedical lay testimony. See 20 C.F.R. § 416.920c(d). The regulations indicate ALJs should consider "all of the available evidence" in evaluating the intensity and persistence of symptoms, including evidence from "medical sources and nonmedical sources" about the effect of a claimant's symptoms. 20 C.F.R. §§ 404.1529(c)(1), 416.929(c)(1); see also SSR 16-3p (requiring ALJs to consider other evidence such as other nonmedical sources to evaluate symptoms). However, an ALJ is not required to articulate how evidence

1 from nonmedical sources was considered using the requirements applicable to
2 evaluations of medical opinions. See 20 C.F.R. §§ 404.1520c(d), 416.920c(d).

3 Prior to 2017, in the Ninth Circuit the rule was that “[i]f the ALJ wishes to
4 discount the testimony of lay witnesses, he must give reasons that are germane to
5 each witness.” *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993). However, in
6 light of the new regulations promulgated in 2017, the Ninth Circuit retreated from
7 this requirement in *Hudnall v. Dudek*, 130 F.4th 668, 669 (9th Cir.), although this
8 opinion has since been withdrawn and vacated. 133 F.4th 968 (9th Cir. 2025); *see*
9 *also Whisper C. v. Dudek*, 2025 WL 833215, at *6 (E.D. Wash. Mar. 17, 2025) (“the
10 germane reasons precedent no longer applies to claims filed on or after March 27,
11 2017”). Whether or not an ALJ must provide germane reasons to reject a lay
12 witness’s testimony thus remains an open question. *See Donnelly, v. Commissioner*
13 *of Social Security*, 2025 WL 1473954, at *14 (E.D. Cal. May 22, 2025).

14 Regardless of whether the germane reasons precedent still stands, the ALJ did
15 not reject Mr. H.’s mother’s testimony. Mr. H.’s mother provided somewhat
16 confusing testimony that Mr. H. needed reminders, check-ins, and positive
17 reinforcement to do chores, but also that even absent supervision, he would not leave
18 a chore before it was done or forget to finish it. Tr. 76-81. The ALJ interpreted this
19 testimony to mean that Mr. H. did not require supervision to complete tasks. Tr. 24.
20 This interpretation is not unreasonable and consistent with the statements from Mr.
21 H. and his father that Mr. H. was able to perform chores without assistance. Tr. 688,

697, 765-67. As the ALJ did not reject Mr. H.’s mother’s testimony, there was no need to provide germane reasons to do so. The ALJ did not err as substantial evidence supports her findings.

B. Symptom Testimony

Mr. H. contends the ALJ improperly discounted his testimony showing he was unable to work.

An ALJ engages in a two-step analysis to determine whether to discount a claimant’s testimony regarding subjective symptoms. SSR 16-3p, 2016 WL 1119029, at *2. “First, the ALJ must determine whether there is ‘objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged.’ ” *Molina*, 674 F.3d at 1112 (quoting *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)). Second, “[i]f the claimant meets the first test and there is no evidence of malingering, the ALJ can only reject the claimant’s testimony about the severity of the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations omitted). “The clear and convincing [evidence] standard is the most demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

Factors to be considered in evaluating the intensity, persistence, and limiting effects of a claimant’s symptoms include the claimant’s daily activities and the

1 location, duration, frequency, and intensity symptoms. SSR 16-3p, 2016 WL
2 1119029, at *7-*8; 20 C.F.R. § 416.929(c)(3). The ALJ is instructed to “consider
3 all of the evidence in an individual’s record,” “to determine how symptoms limit
4 ability to perform work-related activities.” SSR 16-3p, 2016 WL 1119029, at *2.
5 The consistency of a claimant’s statements with the rest of the record are another
6 factor to be considered. 20 C.F.R. § 416.929(c)(4).

7 At the first step, the ALJ found there was objective medical evidence of an
8 underlying impairment which could reasonably be expected to produce the
9 symptoms Mr. H. alleged. Tr. 24. However, on the second step the ALJ found Mr.
10 H.’s statements about the intensity, persistence, and limiting effects of his symptoms
11 to be inconsistent with the record. *Id.*

12 Contrary to Mr. H.’s contentions on appeal, the ALJ credited most of Mr. H.’s
13 testimony and reports. Tr. 23-25. Mr. H. repeatedly indicated he was able to care for
14 himself, follow instructions, fill out job applications, volunteer, do chores, find, shop
15 for, and prepare recipes, use public transportation, manage money, and build Lego
16 kits. Tr. 65-71, 695-701, 765-67. It is not an error for an ALJ to consider the
17 testimony and statements of a claimant and reasonably interpret them to mean he is
18 not disabled. *See Orteza v. Shalala*, 50 F.3d 748, 750 (9th Cir. 1995).

19 The only statements of Mr. H.’s that the ALJ appears to have rejected were
20 from a function report provided to Dr. Marks in 2017, wherein Mr. H. stated he
21 could not do chores, go shopping, or manage his finances. Tr. 765-67. The ALJ

1 provided specific, clear, and convincing reasons for rejecting these statements. Tr.
2 25. Specifically, the ALJ noted Mr. H.'s reports of limitations in 2017 were
3 contradicted by statements made by Mr. H. and his father in 2021 function reports,
4 Tr. 686-705, as well as being inconsistent with contemporaneous notes in his
5 vocational records which indicated was successfully able to work. Tr. 320, 360-61,
6 442-51. Inconsistency with the record as a whole is a sufficient basis to reject a
7 claimant's statements. 20 C.F.R. § 416.929(c)(4); Social Security Ruling 16-3p,
8 2017 WL 5180304, at *5 (effective October 25, 2017). Therefore, the ALJ did not
9 err by rejecting Mr. H.'s statements in the 2017 function report.

10 As with his mother's testimony, Mr. H. emphasizes parts of his testimony
11 which he believes indicates he is disabled. Specifically, Mr. H. points to his
12 testimony on his termination from his job as a cart attendant for being off-task, and
13 his inability to obtain a driver's license. Tr. 65-71. The ALJ explicitly considered
14 this testimony in her decision but found it did not demonstrate Mr. H. was disabled.
15 Tr. 24. The ALJ's interpretation of Mr. H.'s testimony was not a rejection, and it
16 was reasonable in light of the evidence from Mr. H., his parents, his IQ testing, and
17 his vocational records which showed he had acceptable concentration, persistence,
18 and pace. *Id.*

19 Finally, Mr. H. contends the ALJ should have rejected his testimony entirely
20 because he is cognitively impaired. Mr. H. did not raise the matter of his
21 competency to testify before the ALJ. There is no law or regulation requiring an ALJ

1 to reject a claimant's testimony simply because he has a cognitive impairment. To
2 do so would prevent claimants suffering from an intellectual disability from
3 testifying as to their symptoms. Mr. H.'s cognitive impairment does not itself
4 constitute clear and convincing evidence which would allow the ALJ to reject his
5 testimony on his symptoms, much less a reason requiring her to do so.

6 For the above reasons, the ALJ's treatment of Mr. H.'s symptom testimony
7 was not an error.

8 **C. Medical Opinions**

9 Mr. H. contends the ALJ failed to properly evaluate the opinions of Drs.
10 Marks, Mohny, and Atkins. The regulations provide that an ALJ must consider and
11 evaluate the persuasiveness of all medical opinions or prior administrative medical
12 findings from medical sources. 20 C.F.R. §§ 404.1520c, 416.920c. Supportability
13 and consistency are the most important factors in evaluating the persuasiveness of
14 medical opinions and prior administrative findings, and therefore the ALJ is required
15 to explain how both factors were considered. 20 C.F.R. §§ 404.1520c(b)(2),
16 416.920c(b)(2). The ALJ may, but is not required, to explain how other factors were
17 considered. 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2); *see* 20 C.F.R. §§
18 404.1520c(c)(1)-(5), 416.920c(c)(1)-(5).

19 *1. N.K. Marks, Ph.D.*

20 In September 2017, Dr. Marks completed a psychodiagnostics evaluation of
21 Mr. H. and diagnosed borderline intellectual functioning. Tr. 765-72. Dr. Marks

1 found Mr. H. would have trouble retaining what he hears, solving new problems,
2 and with following new directions. Tr. 771. Dr. Marks also found Mr. H. was
3 capable of remembering and carrying out simple and moderately complex
4 instructions, and was able to solve problems in familiar situations, but could not
5 think on his feet well and presented a higher risk of something unforeseen went
6 wrong. *Id.* Dr. Marks concluded that Mr. H. “will need considerable supervision and
7 training, much more than other peers.” Tr. 772.

8 The ALJ found Dr. Marks’s opinion that Mr. H. would have trouble retaining
9 what he heard, solving new problems, and following directions unsupported and
10 internally inconsistent, because Mr. H. satisfactorily completed memory tests and
11 followed simple and more complex tasks at his examination. Tr. 27. While the ALJ
12 is correct that Dr. Marks failed to cite specific evidence in support of his opinions,
13 Mr. H. points out that Dr. Marks made findings in his report that support his ultimate
14 opinion. Specifically, Dr. Marks found Mr. H.’s poor fluid reasoning IQ subtest
15 score indicated he would have trouble problem-solving. Tr. 769. While Mr. H.
16 performed relatively well on his verbal IQ and working memory subtests, Dr. Marks
17 found he still performed “at a level well below his peers,” indicating difficulty
18 retaining information or following directions. Tr. 770. Dr. Marks also found Mr. H.
19 demonstrated simplistic language, an inability to give an organized personal
20 memory, poor working memory, poor-long term memory, deficits in math, and
21 concrete literal reasoning with deficits in abstract reasoning. Tr. 767-68.

1 Overall, Mr. H.’s performance varied during Dr. Marks’s exam, something
2 Dr. Marks noted. Tr. 770. As the ALJ found, Mr. H.’s relatively good performance
3 in some areas suggested he did not have trouble retaining what he heard, following
4 directions, or solving problems. But as Mr. H. points out, Dr. Marks’s opinion is
5 supported by his performance in other areas.

6 Ultimately, Dr. Marks’s opinion is not unsupported or internally inconsistent
7 simply because some of Mr. H.’s raw examination results suggested higher
8 functioning. By focusing only on the parts of Mr. H.’s performance which did not
9 support Dr. Marks’s medical opinion, the ALJ appears to have improperly
10 substituted her own interpretation of the data in place of Dr. Marks. *See Tackett*, 180
11 F.3d at 1102-03. The ALJ’s finding that Dr. Marks’s opinion was unsupported and
12 internally inconsistent lacks substantial evidence, and therefore was an error.

13 The ALJ also found Dr. Marks’s opinion that Mr. H. should be monitored due
14 to problems thinking on his feet was unsupported (“vague”) as Mr. H. was oriented,
15 knew what his appointment was about, could describe a recent news story, had a fair
16 fund of knowledge, and showed good concentration, persistence, and pace at his
17 examination. Tr. 27 Again, the ALJ appears to have substituted her own judgment
18 on Mr. H.’s variable examination performance for that of Dr. Marks. Dr. Marks’s
19 opinion was supported by his findings that Mr. H.’s fluid reasoning IQ subtest score
20 indicated “[h]e may learn to do things in one way, but he may not be able to figure
21 out how to do things in a different way. He may have trouble problem solving ‘on

1 the fly.’” Tr. 769. Mr. H. also displayed slow processing and poor abstract
2 reasoning. Tr. 767-68. While other examination results did not support his opinion, it
3 cannot be said Dr. Marks’s opinion was unsupported. For that reason, the ALJ’s
4 finding lacked substantial evidence, and was an error.

5 While the ALJ erroneously analyzed Dr. Marks’s opinions, these errors are
6 ultimately harmless. The ALJ properly found Dr. Marks’s final conclusion—that
7 Mr. H. required considerable supervision and training—inconsistent with the record.
8 In light of this significant inconsistency, it was not an error for the ALJ to find Dr.
9 Marks’s opinion unpersuasive as a whole.

10 In support of her finding of inconsistency with the record as a whole, the ALJ
11 cited Mr. H.’s vocational records contemporary with Dr. Marks’s evaluation, which
12 showed Mr. H. did better with a single, male supervisor and his interaction, stamina,
13 and speed improved to acceptable levels. The vocational records also showed Mr. H.
14 moved slower at first but with increasing stamina with work and not having low
15 stamina while working. Tr. 320, 361, 371, 444. The ALJ also cited Mr. H.’s
16 mother’s testimony that Mr. H. completed household tasks with reminders to start
17 them but not ongoing supervision during tasks, and Mr. H.’s own report that he
18 could complete all household chores. Tr. 77-78, 697-98. All of this constitutes
19 substantial evidence in support of the ALJ’s finding of inconsistency.

20 Mr. H. contends the ALJ’s discussion of interaction, stamina, and speed is
21 irrelevant. See Tr. 26. The Court disagrees. Mr. H.’s interaction, stamina, and speed

1 implicate his ability to understand training and complete work independently. Mr. H.
2 also incorrectly claims he required a single male supervisor and accommodations.
3 Neither Dr. Marks nor the ALJ found such limitations.

4 Mr. H. contends the ALJ erred by finding his previous ability to work
5 inconsistent with Dr. Marks's opinion, as he was ultimately terminated from his job
6 as a cart attendant due to his inability to stay on task. Mr. H. cites *Lester v. Chater*,
7 81 F.3d 821 (9th Cir. 1995), and *Lingenfelter v. Astrue*, 504 F.3d 1028 (9th Cir.
8 2007), in support of his argument. These cases are inapposite. *Lester* concerned a
9 claimant who did not work but had brief periods where his back pain responded to
10 treatment. 81 F.3d 821, 833. *Lingenfelter* concerned a claimant who returned to
11 work for merely nine weeks before his medical condition caused him to be fired. 504
12 F.3d 1028, 1038-40 (9th Cir. 2007). Mr. H. on the other hand was able to
13 successfully work as a cart attendant for nine months, and prior to that held jobs as a
14 janitor and as a stock clerk for over a year each. Tr. 376, 516, 560, 706-07. It was
15 not an error for the ALJ to consider Mr. H.'s demonstrated ability to work for
16 sustained periods of time, and to find this inconsistent with Dr. Marks's opinion.

17 Mr. H. also contends it was an error for the ALJ to find his ability to function
18 at home inconsistent with Dr. Marks's opinion, citing to *Diedrich v. Berryhill*, 874
19 F.3d 634 (9th Cir. 2017). However, *Diedrich* concerned the higher clear and
20 convincing standard necessary to reject a claimant's account of their symptoms, not
21 the lower substantial evidence standard to find a medical opinion inconsistent with

1 the record. *Diedrich* is therefore inapplicable and the ALJ did not err by finding Mr.
2 H.'s ability to independently perform tasks of daily living inconsistent with Dr.
3 Marks's opinion that he required considerable supervision and training.

4 Moreover, Mr. H.'s ability to do chores was not the only reason the ALJ
5 found Dr. Marks's opinion inconsistent. Even if it was an error to compare his
6 ability to perform daily activities inside the home with his ability to work, any error
7 was harmless as the ALJ's finding was still supported by other substantial evidence.

8 2. *Carol Mohny, Ph.D. and Howard Atkins, Ph.D.*

9 Dr. Mohny reviewed Mr. H.'s case file in July 2021, finding Mr. H. was not
10 disabled. Tr. 95-134. On reconsideration, Dr. Atkins performed another review in
11 July 2022 and endorsed Dr. Mohny's findings. Tr. 135-80. While the two doctors
12 found Mr. H. was not disabled, they agreed he could remember and carry out only
13 simple, one-to-two step instructions. Tr. 110.

14 The ALJ found the opinions of Drs. Mohny and Atkins partially persuasive.
15 Tr. 27-28. The ALJ implicitly rejected the doctors' finding that Mr. H. could only
16 remember and carry out only simple, one-to-two step instructions by instead finding
17 he could perform simple, repetitive, and routine tasks. Tr. 28. The ALJ appears to
18 have found the doctors' opinion inconsistent with the record as a whole. *Id.*

19 The ALJ cited Mr. H.'s mother's testimony that Mr. H. could complete
20 chores, Tr. 77-78, his Mr. H.'s father's function report which stated Mr. H. could
21 print recipes from the computer and make dinner, Tr. 689, Mr. H.'s testimony that

1 he could apply for jobs online, Tr. 70-71, Mr. H.'s function report which stated he
2 could do chores, follow instructions, use public transportation, manage money, build
3 Lego kits, and shop, Tr. 695-701, and Mr. H.'s examination with Dr. Marks where
4 the doctor found Mr. H. showed good concentration, persistence, and pace, and
5 satisfied a short term memory test. Tr. 767. This constitutes substantial evidence in
6 support of the ALJ's finding that Mr. H. could perform more complex tasks than
7 simple, one-to-two step instructions.

8 Mr. H. contends on appeal that the ALJ erred by rejecting Drs. Mohney and
9 Atkins's limitation to simple, one-to-two step instructions. Mr. H. repeats his
10 arguments that the ALJ misinterpreted his mother's testimony, and that she should
11 have discredited his testimony entirely due to his cognitive impairment. As
12 discussed above, these arguments are unavailing. The ALJ did not err by rejecting
13 Drs. Mohney and Atkins' limitation.

14 Mr. H. relatedly argues the ALJ erred at step four by failing to provide a
15 complete RFC hypothetical, including Drs. Mohney and Atkins's limitation to
16 simple, one-to-two step instructions, to the vocational expert at the hearing. The
17 ALJ's hypothetical was not an error for the same reasons she did not err by finding
18 Mr. H. could perform simple, repetitive and routine tasks. *See Stubbs-Danielson v.*
19 *Astrue*, 539 F.3d 1169, 1176 (9th Cir. 2008).

20 **D. The Listings**
21

1 At step three, the ALJ found Mr. H. did not meet the A or B criteria for
2 Listing 12.05 intellectual disorder. Tr. 19-22. The ALJ found Mr. H. did not satisfy
3 the B criteria because he was not diagnosed with a full-scale IQ under 70 prior to
4 age 22, and had only mild or moderate limitations in the four areas of mental
5 functioning required by Listing 12.05. *Id.*

6 Mr. H. contends the ALJ erred by misstating the B criteria, and by finding Mr.
7 H. only had moderate limitations in two areas of mental functioning outlined therein.
8 Mr. H. contends that when Dr. Marks's findings and test results and the testimony of
9 his mother are properly considered, and Mr. H.'s own testimony disregarded, he is
10 severely limited in these areas.

11 The B criteria for Listing 12.05 Intellectual Disorder provides:

12 Satisfied by 1, 2, and 3 (see 12.00H):

13 4. Significantly subaverage general intellectual functioning evidenced by a
or b:

- 14 a. A full scale (or comparable) IQ score of 70 or below on an
individually administered standardized test of general intelligence; or
15 b. A full scale (or comparable) IQ score of 71-75 accompanied by a
verbal or performance IQ score (or comparable part score) of 70 or
16 below on an individually administered standardized test of general
intelligence; and

17 5. Significant deficits in adaptive functioning currently manifested by
extreme limitation of one, or marked limitation of two, of the following areas
of mental functioning:

- 18 a. Understand, remember, or apply information (see 12.00E1); or
19 b. Interact with others (see 12.00E2); or
c. Concentrate, persist, or maintain pace (see 12.00E3); or
20 d. Adapt or manage oneself (see 12.00E4); and
21 6. The evidence about your current intellectual and adaptive
functioning and about the history of your disorder demonstrates or
supports the conclusion that the disorder began prior to your attainment
of age 22.

1 20 C.F.R. Pt. 404, Subpt. P, App. 1, 12.05.

2 As the parties agree, the ALJ erred by stating Mr. H. did not satisfy the B
3 criteria because he was not diagnosed with a full-scale IQ under 70 prior to age 22.
4 This finding appears to combine two separate B criteria requirements – (1) that a
5 claimant be diagnosed with an IQ under 70; and (2) that a claimant have evidence
6 about his current intellectual and adaptive functioning that demonstrates the disorder
7 began before age 22. While Mr. H. may not have been diagnosed with a full-scale IQ
8 under 70 before he was 22, Dr. Marks diagnosed his full-scale IQ at 66 in 2017,
9 when he was 30. Tr. 768. The record also contains evidence that Mr. H.’s condition
10 began before age 22, for example, his mother testified he was enrolled in special
11 education classes in school and had developmental delays growing up. Tr. 74-75.

12 This error is harmless, however, because the ALJ properly found that Mr. H.
13 had only mild or moderate limitations in the four areas of mental functioning
14 required by Listing 12.05.

15 Mr. H. contends that the ALJ erred by finding he had only moderate
16 limitations in the areas of understanding, remembering, or applying information, and
17 concentration, persistence, and maintaining pace. Mr. H. contends that Dr. Marks’s
18 findings on his IQ test demonstrated he has marked limitations in these areas.

19 Mr. H.’s argument fails to appreciate the applicable standard of review. This
20 Court must uphold the ALJ’s findings if they are supported by substantial evidence.
21 The ALJ found Mr. H. had a moderate limitation in the area of understanding,

1 remembering, or applying information because his mother testified he could
2 complete chores, Tr. 77-78, Mr. H. testified he could fill out online job applications,
3 Tr. 70-7, and indicated in his function report that he did all chores, followed
4 instructions well, could use public transportation, could manage money, could build
5 Lego kits, and shopped. Tr. 695-701. The ALJ also considered Dr. Marks's report,
6 specifically Dr. Marks's opinion that Mr. H. had borderline to below average
7 cognitive ability, and Mr. H.'s ability to successfully perform short term memory
8 tests during the examination. Tr. 767. Likewise, the ALJ found Mr. H. had a
9 moderate limitation in the area of concentration, persistence, and maintaining pace,
10 citing the same evidence in support.

11 The evidence cited by the ALJ in support of her findings constitutes
12 substantial evidence in support of a moderate limitation. The fact Mr. H. can argue
13 for a different conclusion using other evidence in the record is irrelevant. *See*
14 *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989) (ALJ "responsible for
15 resolving ambiguities" in the record). The ALJ's findings were supported by
16 substantial evidence, and the Court will not disturb these findings on appeal.

17 Mr. H. again argues the ALJ improperly construed his mother's testimony,
18 and improperly considered his own statements in light of his cognitive impairment.
19 As discussed above, the ALJ did not err in her treatment of this evidence.

20 CONCLUSION

1 Having reviewed the record and the ALJ's findings, this Court concludes the
2 ALJ's decision is supported by substantial evidence and free of harmful legal error.

3 Accordingly,

4 1. Mr. H.'s Brief, **ECF No. 12**, is **DENIED**.

5 2. Defendant's Brief, **ECF No. 14**, is **GRANTED**.

6 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this Order
7 and provide copies to counsel. Judgment shall be entered for Defendant and the file
8 shall be **CLOSED**.

9 **DATED** June 6, 2025.

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11 REBECCA L. PENNELL
12 United States District Judge
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